

REMARKS

Claims 1-20 were pending in this application.

Claims 1-20 have been rejected.

No claims have been amended in this Response.

Claims 1-20 remain pending in this application.

Reconsideration of Claims 1-20 is respectfully requested.

I. REJECTIONS UNDER 35 U.S.C. § 103

The Office Action rejects Claims 1, 6, 7, 11, 13 and 18-20 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5, 408,663 to Miller ("*Miller*") in view of U.S. Patent No. 6,360,263 to Kurtzberg, *et al.* ("*Kurtzberg*"). The Office Action also rejects Claims 2, 3, 8, 12, 14 and 15 under 35 U.S.C. § 103(a) as being unpatentable over *Miller* in view of *Kurtzberg* in further view of U.S. Patent No. 5,212,791 to Damian, *et al.* ("*Damian*"). The Office Action also rejects Claims 4 and 16 under 35 U.S.C. § 103(a) as being unpatentable over *Miller* in view of *Kurtzberg* further in view of U.S. Patent No. 6,732,140 to McCue ("*McCue*"). The Office Action also rejects Claims 5, 9, 10 and 17 under 35 U.S.C. § 103(a) as being unpatentable over *Miller* in view of *Kurtzberg* and *McCue* further in view of *Damian*. These rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to

deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on the applicant's disclosure. MPEP § 2142.

The Applicants direct the Examiner's attention to Claim 1, which contains the unique and non-obvious limitations emphasized below:

1. A resource allocator that is operable to allocate a plurality of resources among a plurality of tasks within a process system, said plurality of resources comprising human resources and process resources, and said process system comprising a plurality of application processes, said resource allocator comprising:

a memory that stores a model of said process system, said model representing mathematically said plurality of application processes, said plurality of resources, and said plurality of tasks, and defining relationships among related ones thereof;

a status monitoring controller that monitors measurable characteristics associated with ones of said process system, said plurality of application processes, said plurality of resources, and said plurality of tasks; and

a resource allocation controller that modifies ones of said mathematical representations and that allocates ones of said plurality of resources among ones of said plurality of tasks within said process system in response to ones of said monitored measurable characteristics. (*Emphasis added*).

Independent Claims 7 and 13 recite analogous limitations. The Applicants respectfully assert that the *Miller*, *Kurtzberg*, *Damian* or *McCue* references, individually or in combination, do not disclose, suggest, or even hint at the above-emphasized limitations of Claims 1, 7 and 13.

In rejecting independent Claims 1, 7 and 13, the Examiner asserted that the description in the *Miller* reference of "tasks constituting a project" teaches the Applicants' recited limitation of a process system comprising a plurality of application processes. Initially, the Applicants note that the *Miller* reference describes a system that allocates resources to tasks in a single project, not a plurality of projects. Furthermore, the Applicants respectfully submit that the Examiner has misunderstood the language of the claims.

Application processes and tasks are separately recited elements of the Applicants' invention. There are tasks within the recited process system, but the process system also comprises application

processes. As recited, the model of the process system stored in memory in the Applicants' invention represents application processes and tasks separately. The recited status monitoring controller monitors separate measurable characteristics of application processes and tasks. In short, the application processes are not the aggregate of the tasks, as asserted in the rejection.

The four cited references do not disclose, suggest, or even hint at this limitation of the independent Claims 1, 7 and 13. All are concerned with the more limited problems of allocating project resources to tasks (*Miller*), computing resources to jobs (*Kurtzberg*), production resources to orders (*Damian*), and software resources to functions (*McCue*). None of the cited references addresses a resource allocator for a process system comprising application processes that models resources, tasks and application processes, and monitors measurable characteristics of the resources, tasks and application processes in order to allocate the resources to the tasks, as recited in independent Claims 1, 7 and 13. This being the case, Claims 1, 7 and 13 are patentable over the *Miller*, *Kurtzberg*, *Damian* and *McCue* references.

Also, dependent Claims 2-6, 8-12 and 14-20 depend from independent Claims 1, 7 and 13, directly or indirectly, and contain all of the unique and non-obvious limitations recited in the base claims. As such, Claims 2-6, 8-12 and 14-20 also are patentable over the *Miller*, *Kurtzberg*, *Damian* and *McCue* references. Thus, the Applicants respectfully request the withdrawal of the §103 rejections of Claims 1-20.

II. CONCLUSION

For the reasons given above, the Applicant respectfully requests reconsideration and full allowance of all pending claims and that this application be passed to issue.

SUMMARY

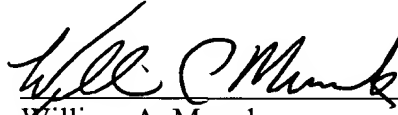
If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *wmunck@davismunck.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication (including any extension of time fees) or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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